Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Expedited	)	CC Docket No. 98-5
Declaratory Ruling	)	

REPLY COMMENTS OF AMERITECH

I. INTRODUCTION

LCI proposes a "draconian" form of structural separation between Bell Operating Company ("BOC") local retail and wholesale operations. LCI claims that its proposal can expedite residential local competition under Section 251 and long distance entry by the BOCs under Section 271 of the Telecommunication Act of 1996 ("the Act"). However, as demonstrated in the comments, the proposal is a dead end.

In its Opposition, Ameritech urges that the Commission dismiss the LCI Petition for several reasons. First, structural separation at the local level, as proposed by LCI, is inconsistent with the Act and cannot be a condition for BOC long distance entry or operation. Second, even if the Commission had the legal authority to approve LCI's proposal (which it does not) the Commission should not, because the plan is a poor public policy choice. In fact, if implemented, LCI's proposal would produce operational and economic inefficiency and degrade the quality of BOC retail and wholesale services. Third, apart from its legal and policy defects, the LCI proposal is seriously flawed because it will not resolve the concerns identified by LCI. With respect to long distance entry, this is not a "fast track." With regard to local entry, the plan will

not address LCI's utilization of operations support systems ("OSS"), nor will it give it the legal right to obtain shared transport or the so-called platform.

Two points are clear from the Comments. First, most parties agree that the LCI plan goes far beyond the requirements of the Act and may not be imposed by the Commission. In fact, most parties agree that the Commission cannot waive full compliance with all the competitive checklist items.[1] A number of commenters agree with Ameritech that the plan is also fundamentally inconsistent with other provisions of the Act.[2] For these reasons, the plan cannot be imposed upon the BOCs, and could only be implemented if voluntarily adopted by the BOCs. However, all the BOCs are dead set against the plan. As such, the proposal will never be voluntarily implemented and, therefore, LCI's Petition should be dismissed, as moot.

Second, there is no general agreement among BOC competitors on what actions (beyond those required by Sections 271 and 272 of the Act) will cause them to support BOC long distance entry. In fact, each BOC competitor seeks to out do LCI by coming up with even more onerous and punitive requirements and conditions.[3] The plan should be seen for what it is, yet another ploy to delay BOC entry into the long distance business.

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[1] See, AT&T at 10, Bell Atlantic at 1, BellSouth at 5, Cable & Wire at 8, Competitive Policy Institute at 1, State Consumer Advocates at 2.

[2] See, Bell Atlantic at 5, 8-7; BellSouth at 2-3; Connecticut Department of Public Utilities Control ("CDPUC") at 3; SBC at 3; US West at 7-15.

[3] See, Ad Hoc at 10; Competitive Policy Institute at 1 ("spin off" NetCo or ServeCo); FiberNet at 2 (divestiture, greater safeguards and application to non-BOC incumbent carriers); KMC at i, 9 ("limit RBOC interest to 25% interest in its wholesale subsidiary, and to no more than 49% in its retail subsidiary); Level 3 Communications at 11-13; MCI at 4 ("complete divestiture); State Consumer Advocates at 2 ("substantially strengthened"); and WorldCom at 1 ("full divestiture").

II. NONE OF THE BOCs HAVE "VOLUNTEERED" TO IMPLEMENT LCI's ILL-CONCEIVED PROPOSAL AND, THEREFORE, THE COMMISSION SHOULD DISMISS THE PETITION, AS MOOT.

Virtually all parties agree with Ameritech that the LCI plan exceeds the requirements of the Act and may not be imposed by the Commission.[4] Moreover, there is general agreement that local structural separation may not become a new competitive checklist requirement or otherwise directly or indirectly imposed as a condition of long distance entry.[5]

Although BOC competitors argue in support of some form of structural separation, none demonstrate that under the Act the Commission is granted the authority to impose or even administer such a plan. A few parties argue that structural separation can be imposed indirectly through application of the "public interest" standard in Section 271.[6] However, as demonstrated by Ameritech and the other BOCs, local structural separation is not only not authorized by the Act, it was not contemplated by Congress, and is fundamentally inconsistent with the Act.[7] Therefore, the Commission should not seek to create this new checklist requirements through the back door of public interest standard in contravention of Section 271(d)(4) of the Act.

Further, the LCI proposal exceeds the Commission's jurisdiction since it involves the

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[4] *Supra.*, ft. nt. 1.

[5] For example, AT&T at 11 states that the Commission cannot "define any sort of 'rebuttable presumption' or factual 'safe harbor' of section 271 compliance . . . [r]igorous application of the competitive checklist is essential . . . "; Cable & Wireless at 8 avers that the plan "does not replace Section 271"; and State Consumer Advocates at 2 argues that the plan does "not eliminate any 271 requirement".

[6] See, for example, Competition Policy Institute at 13; and KMC Telecom, Inc. at 14-16.

[7] *Supra.*, ft. nt. 2.

structure of BOC intrastate local operations.[8] The courts have clearly held that the Commission may not expand its jurisdiction to local matters over which it has not been granted explicit jurisdiction under the Act through the use of the public interest test under Section 271(d)(3)(C).[9]

As such, if the LCI plan or any other form of local structural separation is implemented at the national level, it will be because the plan is voluntarily adopted by the BOCs. However, there are no BOC "volunteers." The comments of all the BOCs and other parties make it crystal clear that the BOCs are inalterably opposed to the plan for good business reasons.[10] Basically, the BOCs are concerned that implementation of the plan will introduce structural inefficiency, inflate costs, degrade service, and create customer dissatisfaction with the BOCs and the quality of their service. Moreover, they also generally agree that the plan will delay, perhaps indefinitely, long distance entry by the BOCs.[11]

In particular, the BOCs agree with Ameritech that implementation of the LCI plan will harm end users and degrade service quality. For instance, they aver that the plan, if implemented,

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[8] See, Bell Atlantic at 8 (cannot regulate how BOCs "offer local intrastate telephone service"); BellSouth at 4 ("no such authority to regulate a Bell company's core intrastate operations") and at 2 (LCI's proposal to substitute or add new requirements to the checklist is inconsistent with Congress's express instructions") and at 3 ("section 272 provides no authority to divide a Bell company's local business"); CDPUC at 3 ("separation of these systems [OSS] goes well beyond what is required by the Telecommunications Act of 1996"); SBC at 3; and US West at 7-15 ("more onerous than the separation requirements imposed by Section 272").

[9] Iowa Utilities Board, Bell Atlantic Corporation, et al v. Federal Communications Commission, 135 F.3d 535, 541. The court held "[w]here there is no unambiguous grant of intrastate authority. . . Section 2(b) prevents the FCC from intruding on the states intrastate tariff." The court also held that the "FCC may not accomplish indirectly that which we held it may not do directly."

[10] See, for example, Ad Hoc at 13 (without either the opportunity to be made whole for, or to exploit and increase earning on, the embedded infrastructure, it seems unlikely that the LCI plan would be elected."); Bell Atlantic at 5 (will slow long distance entry); CDPUC at 5 (adverse tax implications and higher debt costs); KMC at ii; SBC at 4-8 ("draconian", relinquish all internal efficiencies, and has the effect of keeping the BOC out of the long distance business "indefinitely" or rendering it "ineffective" and "deprive of economies of scope").

[11] See, Bell Atlantic at 5; BellSouth at 5; SBC at 8; and US West at 30.

will "confuse and irritate" customers[12]; eliminate the incentive and ability to invest in new technologies and the network[13]; increase costs and rates[14]; deny to consumers the benefits of integration and economies of scale[15]; impose disruptive and inconvenient balloting on consumers[16]; and delay the day when consumers will finally enjoy the benefits of full long distance competition.[17]

Also, there is support in the comments for Ameritech's observation that implementation of the LCI plan will eliminate the duty of the BOCs to offer retail services for resale at a discount under Section 251(c)(4) of the Act. This is the case since, after a transition period, the BOC's wholesale subsidiary will no longer offer retail services that can be resold, and its retail operation is not an incumbent LEC that is subject to the resale obligation of Section 251(c)(4). As US West notes, the plan will cause "serious and perhaps irreparable damage to its retail and wholesale business."[18]

For all these reasons, the LCI plan will not be voluntarily implemented by any BOC. Surprisingly, several non-BOC parties seem to agree. For instance, Ad Hoc argues that the BOCs' wholesale operations will not be financially viable under the LCI plan, since the BOCs will only provide wholesale services at TELRIC-based rates, which do not offer the opportunity for

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[12] Bell Atlantic at 6. See also, US West at 20-22..

[13] See, Bell Atlantic at 7; and BellSouth at 8.

[14] See, Bell Atlantic at 7; and SBC at 7.

[15] See, BellSouth at i and 7 where it states that the plan will "rob consumers of the benefits of existing efficiencies in the local telephone business"; and SBC at 29.

[16] See, BellSouth at 8 (onerous and inefficient); and SBC at 31(disruptive and does not reflect customer desires).

[17] See, SBC at 8-9.

[18] US West at 6.

the BOCs to recover their embedded costs of providing wholesale services.[19] As such, under the plan if the BOC wholesale operations are to be financially viable, their rates will need to be increased to recover all the legitimate costs of the BOCs' wholesale business. Thus, the effect of the plan will be to increase, not decrease, wholesale rates.

Another example is the Connecticut Department of Public Utilities Control (CDPUC) who points out that the corporate structure proposed by LCI (where one affiliate of the holding company is partially publicly owned) may lead to double taxation of profits – once as income to the retail affiliate and once as dividends to the holding company.[20] The effect of this double taxation is structural inefficient and higher transactional costs.

Ameritech will not repeat each and every one of the reasons spelled out in the comments why the LCI plan makes no business, economic, or customer service sense. Suffice it to say that this "voluntary" proposal will not be voluntarily implemented and should be dismissed.

III THERE IS NO AGREEMENT ON WHAT ACTIONS THE BOCs MUST TAKE BEFORE THE INTEREXCAHNGE CARRIERS WILL SUPPORT BOC LONG DISTACNE ENTRY.

The BOC's are not alone in their opposition to LCI's proposal (albeit for different reasons). Although LCI goes far beyond what Congress required for BOC long distance entry, virtually all of the BOC competitors argue that the LCI plan does not go far enough.[21] In fact, most BOC competitors want full divestiture, public ownership of both wholesale or retail

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[19] Ad Hoc at 10-11.

[20] CDPUC at 5-6.

[21] *Supra.*, ft. nt. 3.

subsidiaries, and/or other onerous limitations or conditions.[22] The comments clearly demonstrate that there is no consensus among BOC competitors on a reasonable compromise that could eliminate the endless litigation surrounding BOC long distance entry.

The comments once again demonstrate that the interexchange carriers are not interested in a plan that will truly expedite full long distance competition. Rather, consistent with their business interests, they are delaying BOC long distance entry by inventing ever more onerous conditions to which the BOC cannot agree without committing the business equivalent of suicide. As US West correctly notes, the "purpose is to delay the entry of Bell companies that decide not to tear apart their local operations."[23] SBC called the LCI proposal "the most draconian form of 'structural separation' imaginable."[24] However, based on comments of the interexchange carriers, SBC has underestimated the ability of the interexchange carriers to dream up even more severe and punitive sanctions.

However, the Commission should reject these efforts to re-invent the Act. Congress has enacted clear and specific conditions that govern long distance entry by the BOCs in the form of the competitive checklist, and the interexchange carriers were not given the authority to demand more as a condition of BOC entry. The Commission should not be distracted by these maneuvers, but rather should focus on implementing the statutory requirements that Congress did in fact

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[22] See, Ad Hoc at 10; Competitive Policy Institute at 1 ("spin off" NetCo or ServeCo); FiberNet at 2 (divestiture, greater safeguards and application to non-BOC incumbent carriers); KMC at i, 9 ("limit RBOC interest to 25% interest in its wholesale subsidiary, and to no more than 49% in its retail subsidiary); Level 3 Communications at 11-13; MCI at 4 ("complete divestiture"); State Consumer Advocates at 2 ("substantially strengthened"); and WorldCom at 1 ("full divestiture").

[23] US West at 20.

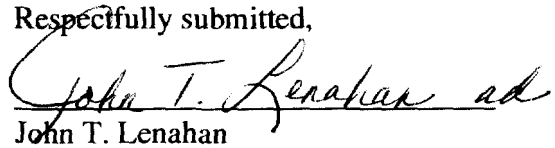
[24] SBC at 4.

adopt. Full implementation of the Act, is the quickest route to full and far competition across all telecommunications services.

IV. CONCLUSION

For the above reasons, the LCI proposal should be dismissed. LCI's plan is contrary to the Act. Moreover, LCI's proposal is a poor policy choice, and in any event will not accomplish its goals. For all these reasons, it cannot be imposed, and will never be voluntarily adopted by the BOCs.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Todd H. Bond, do hereby certify that a copy of the foregoing Reply Comments of Ameritech has been served on the parties on the attached service list, via first class mail, postage prepaid, on this 22nd day of April, 1998.

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